



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2007-28043]**

**Hours of Service (HOS) of Drivers; Application for Renewal and Expansion of American Pyrotechnics Association (APA) Exemption from the 14-Hour Rule during Independence Day Celebrations**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for renewal and expansion of exemption; request for comments.

**SUMMARY:** The American Pyrotechnics Association (APA) has requested a renewal of its exemption for 48 APA member-companies from FMCSA's regulation that drivers of commercial motor vehicles (CMVs) may not drive after the 14<sup>th</sup> hour after coming on duty, and the expansion of its exemption to 10 additional carriers. The APA was previously granted an exemption for 48 of the 58 APA member-companies during the Independence Day periods in 2011 and 2012. Like the other 48 member-companies that operated under the 2011-2012 exemption, the 10 additional member-companies would be subject to all of the terms and conditions of the exemption for the 2013-2014 periods. The exemption would apply solely to the operation of CMVs by these 58 APA-member companies in conjunction with staging fireworks shows celebrating Independence Day during the periods June 28 - July 8, 2013, and June 28 - July 8, 2014, inclusive. During these two periods, approximately 3,200 CMVs and drivers employed by these APA member-companies would be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour driving window. These drivers would not be allowed to drive after accumulating a total of 14 hours of on-duty time, following 10

consecutive hours off duty, and would continue to be subject to the 11-hour driving time limit, and the 60- and 70-hour on-duty limits. The APA maintains that the terms and conditions of the limited exemption would ensure a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.

**DATES:** If granted, this exemption would be effective during the periods of June 28, 2013, through July 8, 2013, inclusive, and June 28, 2014, through July 8, 2014, inclusive. The exemption would expire on July 8, 2014 at 11:59 p.m. Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA-2007-28043 by any of the following methods:

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov). In the ENTER KEYWORD OR ID box enter FMCSA-2007-28043 and click on the tab labeled SEARCH. On the ensuing page, click on any tab labeled SUBMIT A COMMENT on the extreme right of the page and a page should open that is titled "Submit a Comment." You may identify yourself under section 1, ENTER INFORMATION, or you may skip section 1 and remain anonymous. You enter your comments in section 2, TYPE COMMENT & UPLOAD FILE. When you are ready to submit your comments, click on the tab labeled SUBMIT. Your comment is then submitted to the docket; and you will receive a tracking number.
- Fax: 1-202-493-2251.
- Mail: Docket Management Facility: U.S. Department of Transportation,

1200 New Jersey Avenue, SE, West Building, Ground Floor,  
Room W12-140, Washington, D.C. 20590-0001.

- Hand Delivery: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov) at any time, and in the ENTER KEYWORD OR ID box enter FMCSA-2007-28043 and click on the tab labeled SEARCH.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's online privacy policy at [www.dot.gov/privacy](http://www.dot.gov/privacy) or the complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316).

Public Participation: The [www.regulations.gov](http://www.regulations.gov) website is generally available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the “help” section of the [www.regulations.gov](http://www.regulations.gov) website. If you want us to notify you that we received your comments, please include a self-addressed,

stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

**FOR FURTHER INFORMATION CONTACT:** Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: 202-366-4325. E-mail: MCPSD@dot.gov.

**SUPPLEMENTARY INFORMATION:**

**APA Application for Exemption**

The hours-of-service (HOS) rule in 49 CFR 395.3(a)(2) prohibits a property-carrying CMV driver from driving a CMV after the 14<sup>th</sup> hour after coming on duty following 10 consecutive hours off duty. Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the HOS requirements in 49 CFR 395.3(a)(2) for a 2-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The procedures for requesting an exemption (including renewals) are prescribed in 49 CFR part 381.

The APA, a trade association representing the domestic fireworks industry, was previously granted an exemption for 48 of the 58 APA-member companies during the Independence Day periods in 2011 and 2012. The APA held similar 2-year exemptions during Independence Day periods from 2005 through 2010. The 2011-2012 exemption expired on July 9, 2012. Like the other 48 member companies that operated under the 2011-2012 exemption, the 10 specified additional member-companies would be subject to all of the terms and conditions of the exemption.

The initial APA exemption application for relief from the 14-hour rule was submitted in 2004; a copy of the application is in the docket. That application fully describes the nature of the pyrotechnic operations of the CMV drivers employed by APA member-companies during a typical Independence Day period.

As stated in APA's 2004 request, the CMV drivers employed by APA member-companies are trained pyro technicians who hold commercial driver's licenses (CDLs) with hazardous materials (HM) endorsements. They transport fireworks and related equipment by CMVs on a very demanding schedule during a brief Independence Day period, often to remote locations. After they arrive, the drivers are responsible for set-up and staging of the fireworks shows.

The APA states that it is seeking an HOS exemption for the 2013 and 2014 Independence Day periods because compliance with the current 14-hour rule in 49 CFR 395.3(a)(2) by its members would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as its member-companies. To meet the demand for fireworks under the current HOS rules, APA member-companies state that they would be required to hire a second driver for most trips. The APA advises that the result would be a substantial increase in the cost of the fireworks shows – beyond the means of many of its members' customers – and that many Americans would be denied this important component of the celebration of Independence Day. The 58 APA-member companies within the scope of this exemption request are listed in an appendix to this notice. A copy of the request for the exemption is included in the docket referenced at the beginning of this notice.

#### **Method to Ensure an Equivalent or Greater Level of Safety**

The APA believes that renewal of the exemption will not adversely affect the safety of the fireworks transportation provided by these motor carriers. According to APA, its member-companies have operated under this exemption for eight previous Independence Day periods without a reported motor carrier safety incident. Moreover, it asserts, without the extra duty-period time provided by the exemption, safety would decline because APA drivers would be unable to return to their home base after each show. They would be forced to park the CMVs carrying HM 1.1G, 1.3G and 1.4G products in areas less secure than the motor carrier's home base. As a condition of holding the exemption, each motor carrier would be required to notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5) involving the operation of any its CMVs while under this exemption. To date, FMCSA has received no accident notifications, nor is the Agency aware of any accidents reportable under terms of the prior APA exemptions.

In its exemption request, APA asserts that the operational demands of this unique industry minimize the risks of CMV crashes. In the last few days before the Independence Day holiday, these drivers transport fireworks over relatively short routes from distribution points to the site of the fireworks display, and normally do so in the early morning when traffic is light. At the site, they spend considerable time installing, wiring, and safety-checking the fireworks displays, followed by several hours off duty in the late afternoon and early evening prior to the event. During this time, the drivers are able to rest and nap, thereby reducing or eliminating the fatigue accumulated during the day. Before beginning another duty day, these drivers must take 10 consecutive hours off duty, the same as other CMV drivers.

## **Terms and Conditions of the Exemption**

### Period of the Exemption

The requested exemption from the requirements of 49 CFR 395.3(a)(2) is proposed to be effective June 28 through July 8, 2013, inclusive, and from June 28 through July 8, 2014, inclusive. The exemption would expire on July 8, 2014, at 11:59 p.m. local time.

### Extent of the Exemption

This exemption would be restricted to drivers employed by the 58 motor carriers listed in the appendix to this notice. The drivers would be given a limited exemption from the requirements of 49 CFR 395.3(a)(2). This regulation prohibits a driver from driving a CMV after the 14<sup>th</sup> hour after coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by this exemption would be able to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. This exemption would be contingent on each driver driving no more than 11 hours in the 14-hour period after coming on duty. The exemption would be further contingent on each driver having a full 10 consecutive hours off duty following 14 hours on duty prior to beginning a new driving period. The carriers and drivers must comply with all other requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399) and Hazardous Materials Regulations (49 CFR parts 105-180).

### Preemption

During the periods the exemption would be in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person or entity operating under the exemption (49 U.S.C. 31315(d)).

### FMCSA Notification

Exempt motor carriers would be required to notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while under this exemption. The notification must include the following information:

- a. Date of the accident,
- b. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
- c. Driver's name and driver's license number,
- d. Vehicle number and State license number,
- e. Number of individuals suffering physical injury,
- f. Number of fatalities,
- g. The police-reported cause of the accident,
- h. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and
- i. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

### Termination

The FMCSA does not believe the motor carriers and drivers covered by this exemption, if granted, will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions. Exempt motor carriers



and drivers would be subject to FMCSA monitoring while operating under this exemption.

### **Request for Comments**

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comments on the APA's requested exemption from the requirements of 49 CFR 395.3(a)(2). The FMCSA will review all comments received and determine whether approval of the exemption is consistent with the requirements of 49 U.S.C. 31315.

Interested parties or organizations possessing information that would show that any or all of these APA member-companies are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any information submitted and, if safety is being compromised or if the continuation of the exemption is inconsistent with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA will immediately take steps to revoke the exemption of the company or companies and drivers in question.

Issued on: April 30, 2013

---

Larry W. Minor  
Associate Administrator for Policy

**Appendix to Notice of Application for Renewal of American Pyrotechnics Association (APA) Exemption from the 14-Hour HOS Rule during 2013 and 2014 Independence Day Celebrations for 48 Motor Carriers**

	<b>Motor Carrier</b>	<b>Street Address</b>	<b>City, State &amp; Zip Code</b>	<b>DOT #</b>
1.	Alonzo Fireworks Display, Inc.	846 Stillwater Bridge Rd.	Schaghticoke, NY 12154	420639
2.	American Fireworks Company	7041 Darrow Road	Hudson, OH 44236	103972
3.	AM Pyrotechnics, LLC	2429 East 535th Rd.	Buffalo, MO 65622	1034961
4.	Arthur Rozzi Pyrotechnics	6607 Red Hawk Ct.	Maineville, OH 45039	2008107
5.	Atlas Enterprises Inc.	6601 Nine Mile Azle Rd	Fort Worth, TX 76135	0116910
6.	B.J. Alan Company	555 Martin Luther King, Jr Blvd.	Youngstown, OH 44502-1102	262140
7.	Cartwright Fireworks, Inc.	1608 Keely Road	Franklin, PA 16323	882283
8.	Central States Fireworks, Inc.	18034 Kincaid Street	Athens, IL 62613	1022659
9.	Colonial Fireworks Company	5225 Telegraph Road	Toledo, OH 43612	177274
10.	East Coast Pyrotechnics, Inc.	4652 Catawba River Rd.	Catawba, SC 29704	545033
11.	Entertainment Fireworks, Inc.	13313 Reeder Road SW	Tenino, WA 98589	680942
12.	Falcon Fireworks	3411 Courthouse Road	Guyton, GA 31312	1037954
13.	Fireworks & Stage FX America	12650 Hwy 67S. Suite B	Lakeside, CA 92040	908304
14.	Fireworks by Grucci, Inc.	1 Grucci Lane	Brookhaven, NY 11719	324490
15.	Fireworks Extravaganza	174 Route 17 North	Rochelle Park, NJ 07662	2064141
16.	Fireworks West Internationale	910 North 3200 West	Logan, UT 84321	245423
17.	Garden State Fireworks, Inc.	383 Carlton Road	Millington, NJ 07946	435878
18.	Gateway Fireworks Displays	PO Box 39327	St Louis, MO 63139	1325301
19.	Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
20.	Hamburg Fireworks Display Inc.	2240 Horns Mill Road SE	Lancaster, OH	395079
21.	Hi-Tech FX, LLC	18060 170th Ave.	Yarmouth, IA 52660	1549055
22.	Hollywood Pyrotechnics, Inc.	1567 Antler Point	Eagan, MN 55122	1061068
23.	J&M Displays, Inc.	18064 170th Ave	Yarmouth, IA 52660	377461
24.	Kellner's Fireworks Inc.	478 Old Rte 8	Harrisville, PA	481553
25.	Lantis Productions dba Lantis Fireworks and Lasers	799 N. 18150 W.	Fairfield, UT 84013	195428
26.	Legion Fireworks Co., Inc.	10 Legion Lane	Wappingers Falls, NY 12590	554391
27.	Mad Bomber/Planet Productions	PO Box 294, 3999 Hupp Road R31	Kingsbury, IN 46345	777176
28.	Precocious Pyrotechnics, Inc.	4420-278th Ave NW	Belgrade, MN 56312	435931
29.	Pyro Engineering Inc., dba/Bay Fireworks	400 Broadhollow Rd. Ste #3	Farminale, NY 11735	530262
30.	Pyro Shows Inc.	701 W. Central Ave	LaFollette, TN 37766	456818
31.	Pyro Spectacluars, Inc.	3196 N Locust Ave	Rialto, CA 92376	029329
32.	Pyro Spectaculars North, Inc.	5301 Lang Avenue	McClellan, CA 95652	1671438
33.	Pyrotechnic Display, Inc.	8450 W. St. Francis Rd.	Frankfort, IL 60423	1929883
34.	Pyrotecnico (S. Vitale Pyrotechnic Industries, Inc.)	302 Wilson Rd.	New Castle, PA 16105	526749
35.	Pyrotecnico, LLC	60 West Ct	Mandeville, LA 70471	548303
36.	Pyrotecnico FX	6965 Speedway Blvd. Suite 115	Las Vegas, NV 89115	1610728
37.	Rainbow Fireworks, Inc.	76 Plum Ave.	Inman, KS 67546	1139643
38.	RES Specialty Pyrotechnics	21595 286th St	Belle Plaine, MN 56011	523981
39.	Rozzi's Famous Fireworks, Inc.	11605 North Lebanon Rd	Loveland, OH 45140	0483686
40.	Skyworks, Ltd.	13513 W. Carrier Rd.	Carrier, OK 73727	1421047

41.	Spielbauer Fireworks Co, Inc.	220 Roselawn Blvd	Green Bay, WI 54301	046479
42.	Stonebraker-Rocky Mountain Fireworks Co.	5650 Lowell Blvd, Unit E	Denver, CO 80221	0029845
43.	Vermont Fireworks Co., Inc./Northstar Fireworks Co., Inc.	2235 Vermont Route 14 South	East Montpelier, VT 05651	310632
44.	Western Display Fireworks, Ltd.	10946 S. New Era Rd.	Canby, OR 97013	498941
45.	Western Enterprises, Inc.	PO Box 160	Carrier, OK 73727	203517
46.	Western Fireworks, Inc.	14592 Ottaway Road NE	Aurora, OR 97002	838585
47.	Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
48.	Zambelli Fireworks MFG, Co., Inc.	PO Box 1463	New Castle, PA 16103	033167

**Appendix to Notice of Application for Renewal of American Pyrotechnics Association Exemption from the 14-Hour HOS Rule during 2013 and 2014 Independence Day Celebrations for 10 Motor Carriers Not Previously Exempted**

	<b>Motor Carrier</b>	<b>Street Address</b>	<b>City, State &amp; Zip Code</b>	<b>DOT #</b>
1.	American Fireworks Display, LLC	P.O. Box 980	Oxford, NY 13830	2115608
2.	Atlas Pyrovision Productions, Inc.	136 Old Sharon Rd.	Jaffrey, NH 03452	789777
3.	Hawaii Explosives & Pyrotechnics, Inc.	17-7850 N. Kulani Road	Mountain View, HI 96771	1375918
4.	Homeland Fireworks, Inc.	P.O. Box 7	Jamieson, OR 97909	1377525
5.	Island Fireworks Co., Inc.	N1597 County Rd VV	Hager City, WI 54014	414583
6.	Lantis Fireworks, Inc.	130 Sodrac Dr., Box 229	N. Sioux City, SD 57049	534052
7.	Martin & Ware Inc. dba Pyro City Maine & Central Maine Pyrotechnics	P.P. Box 322	Hallowell, ME 04347	734974
8.	Melrose Pyrotechnics, Inc.	1 Kingsbury Industrial Park	Kingsbury, IN 46345	434586
9.	Starfire Corporation	682 Cole Road	Carrolltown, PA 15722	554645
10.	Young Explosives Corp.	P.O. Box 18653	Rochester, NY 14618	450304

**[FR Doc. 2013-10737 Filed 05/06/2013 at 8:45 am; Publication Date: 05/07/2013]**